

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 562

INTRODUCER: Senator Gruters

SUBJECT: Notices of Commencement

DATE: April 3, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 562 amends s. 713.13, F.S., the notice of commencement statute, to:

- Direct the Department of Business and Professional Regulation to furnish for distribution a uniform notice of commencement;
- Establish the existing statutory notice of commencement form as the uniform notice of commencement to be distributed by the department; and
- Require owners and their authorized agents to use the uniform notice of commencement to comply with associated statutory requirements.

The bill takes effect July 1, 2023.

II. Present Situation:

Payment on Construction Projects

During a construction project, the owner of the property to be improved has an interest in ensuring that the contractor performs the construction work in the time and manner described in the construction contract. Contractors and subcontractors, sub-subcontractors, laborers, and materialmen have an interest in receiving payment for their work. Those individuals have a lien or prospective lien on the property improved and are known as lienors. Mechanisms that address these interests of property owners and lienors are set forth in the Construction Lien Law, codified in part I of chapter 713, F.S.,¹ for private construction contracts.

These mechanisms ensure payment and are especially important where many lienors who are not in privity with the owner perform work on a construction project. A lienor not in privity with the owner has a contract with the contractor or a subcontractor, but no direct contractual relationship

¹ See s. 713.001, F.S.

with the owner. As a result, a lienor's identity, work, and charges for services might be unknown to the owner or contractor unless the lienor complies with the notice requirements of the Construction Lien Law. Additionally, compliance with the notice requirements by the various deadlines is a prerequisite to enforcing a lien or pursuing a claim against a payment bond.

A property owner who contracts for the construction of an improvement must carefully follow the requirements of the Construction Lien Law or the owner may become liable for a contractor's failure to pay subcontractors and others. These requirements include the requirements to post and record a notice of commencement.

Notices of Commencement

Construction work generally begins once a "notice of commencement" is posted on the job site and recorded in the court clerk's office.² This notice identifies who owns the property to be improved or who is responsible for the construction project. Accordingly, the notice of commencement will list the name and address of the owner of the property, the fee simple titleholder if different from the owner, the contractor, any lessees, the lender, and the surety.³ Although notices of commencement must substantially follow the sample form provided by statute,⁴ they are not currently required to be uniform throughout the state.

Lienors use the contact information in the notice of commencement to keep the property owner or lessee informed of their identity, work on the construction project, and need to be paid. A notice of commencement generally has a duration of one year after it is recorded.⁵ Any construction liens recorded while the notice of commencement is in effect generally attach and take effect on the date that the notice of commencement is recorded.⁶ Any payment made by the owner after the notice of commencement expires is considered an improper payment.⁷

III. Effect of Proposed Changes:

SB 562 amends s. 713.13, F.S., the notice of commencement statute, to:

- Direct the Department of Business and Professional Regulation to furnish for distribution a uniform notice of commencement.
- Establish the existing statutory notice of commencement form, without modification, as the uniform notice of commencement to be distributed by the department.
- Require owners and their authorized agents to use the uniform notice of commencement to comply with associated statutory requirements.

The bill takes effect July 1, 2023.

² Section 713.13(1)(a), F.S.

³ Section 713.13(1)(a) and (d), F.S.

⁴ See s. 713.13(1)(d), F.S. (providing that "[a] notice of commencement must be in substantially the following form").

⁵ Section 713.13(1)(c), F.S.

⁶ Section 713.07(2), F.S.

⁷ Section 713.13(1)(c), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Business and Professional Regulation anticipates that it will require an indeterminate amount of staff time to develop the uniform notice of commencement in compliance with the bill. However, the department indicates that this can likely be completed using existing resources.⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁸ Department of Business and Professional Regulation, *2023 Agency Legislative Bill Analysis for SB 562*, at 4 (Feb. 13, 2023) (on file with the Senate Committee on Regulated Industries).

VIII. Statutes Affected:

This bill substantially amends s. 713.13 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
